No.

In The

Supreme Court of the United States

October Term, 1997

JANICE E. HETZEL,

Petitioner,

vs.

COUNTY OF PRINCE WILLIAM and CHARLIE T. DEANE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN M. BREDEHOFT
Counsel of Record
ELAINE C. BREDEHOFT
LINDA M. JACKSON
CHARLSON & BREDEHOFT, P.C.
Attorneys for Petitioner
11260 Roger Bacon Drive
Suite 201
Reston, Virginia 20190
(703) 318-6800

72579 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, Inc.

47 pp.

QUESTION PRESENTED FOR REVIEW

May an appellate court, by writ of mandamus, set aside an order granting a new trial, and force a successful civil rights plaintiff to accept a remittitur, without offering the plaintiff the option of a new trial as to damages, without offending the Seventh Amendment to the Constitution of the United States?

LIST OF PARTIES TO THE PROCEEDING

The petitioner, Janice E. Hetzel, was the plaintiff below and appellee in the Court of Appeals. Respondents County of Prince William (Virginia) and Charlie T. Deane were defendants below and appellants in the Court of Appeals. G.W. Jones and C.E. O'Shields were defendants in the trial court, but were not parties to the appeal and are not respondents in this Court.

TABLE OF CONTENTS

Contents

TABLE OF CITATIONS

Cases Cited:

Contents

Contents

Contents

CITATION OF THE REPORTS OF OPINIONS IN THE CASE

This petition seeks review of an order of the United States Court of Appeals granting a petition for mandamus. That order is not reported, and is provided in the Appendix. The trial court's order granting a new trial is also unreported, and is provided in the Appendix.

The petition for mandamus arose out of the district court's grant of a new trial following an earlier remand from the Court of Appeals. That decision of the Court of Appeals is reported as *Hetzel v. County of Prince William*, 89 F.3d 169 (4th Cir. 1996), *cert. denied*, 117 S. Ct. 584, 136 L. Ed. 2d 514 (1996).

STATEMENT OF THE BASIS FOR JURISDICTION

The Order of the Court of Appeals granting respondents' petition for a writ of mandamus was entered September 12, 1997. This Court has jurisdiction pursuant to 28 U.S.C. § 2101(e) to review the judgment in question by writ of certiorari before judgment. *See Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 66 L. Ed. 2d 193, 101 S. Ct. 188 (1980) (reviewing, on petition for writ of certiorari, writ of mandamus issued by Court of Appeals to district court respecting grant of new trial).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes and constitutional provisions involved are set forth verbatim in the Appendix.

The statutes and provisions involved are the First Amendment to the Constitution of the United States, U.S. Const., Amdt. 1; the Seventh Amendment to the Constitution of the

United States, U.S. Const., Amdt. 7; the Fourteenth Amendment to the Constitution of the United States, U.S. Const., Amdt. 14; the anti-retaliation provision of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3(a); and 42 U.S.C § 1983.

STATEMENT OF THE CASE

A. The Underlying Litigation

This was a civil action alleging unlawful discrimination and retaliation in the course of defendants' employment of Petitioner Janice E. Hetzel. Petitioner was, and remains, the only female Hispanic police officer in the Prince William County Police Department.

Officer Hetzel brought harassment, discrimination, and retaliation claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, as well as under 42 U.S.C. § 1983 alleging violations of the Free Speech Clause of the First Amendment (made applicable to the defendants by operation of the Fourteenth Amendment) and violations of the Equal Protection Clause of the Fourteenth Amendment.

Officer Hetzel's claims were tried in January of 1995 before the Hon. Leonie M. Brinkema. The jury heard evidence for more than a week. During trial defendants moved for, but were not granted, relief under Fed. R. Civ. P. 50(a). After the close of evidence and argument of counsel, the jury deliberated over the course of three days before reaching a mixed verdict: the jury found in favor of defendants on Officer Hetzel's claims of discrimination and harassment, but found in favor of Officer Hetzel on each of her three claims of unlawful retaliation.

The jury awarded compensatory damages of $250,000 on each of three counts: unlawful retaliation in violation of Title VII; unlawful retaliation in violation of Officer Hetzel's free speech rights under the First Amendment, and unlawful retaliation in violation of Officer Hetzel's equal protection rights under the Fourteenth Amendment, for a total of $750,000 in compensatory damages.

Defendants moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b), and alternatively for a new trial pursuant to Fed. R. Civ. P. 59(e). The district court held, as a matter of law, that in the absence of underlying discrimination no claim may be asserted for unlawful retaliation solely under the Equal Protection Clause and Section 1983 (thereby reducing the jury award to $500,000), but otherwise denied defendants' motions.

B. The First Appeal

Defendants appealed, and Officer Hetzel cross-appealed. The United States Court of Appeals for the Fourth Circuit decided the appeal on July 11, 1996. The Court of Appeals upheld the determination of liability in favor of Officer Hetzel, but vacated the damage award as excessive, remanding the case for a recalculation of damages and attorney's fees. *Hetzel v. Prince William County*, 89 F.3d 169 (4th Cir.), *cert. denied*, 117 S. Ct. 584, 136 L. Ed. 2d 514 (1996). Judge Luttig's opinion affirmed "the jury's finding of liability on [Officer Hetzel's] retaliation claims." However, characterizing Officer Hetzel's testimony as to her damages as "self-serving" and lacking "corroborat[ion]," the Court of Appeals decided that the jury's verdict was "outrageous" and vacated the compensatory damages award. The Court of Appeals suggested that the appropriate compensatory damage award on remand would be approximately $9,000 to $11,000.

This Court denied Officer Hetzel's petition for a writ of certiorari.

C. Proceedings Giving Rise to This Writ

On remand, Officer Hetzel moved the district court to conduct a trial as to damages. After a non-evidentiary hearing, the district court entered an Order on December 20, 1996, awarding damages in the amount of $50,000, but permitting Officer Hetzel to reject the remittitur and move for a new trial. The district court "ORDERED that plaintiff notify the Court by close of business on Friday, January 10, 1997 whether she will accept this award or move for a new trial."

Officer Hetzel then filed a timely motion under Fed. R. Civ. P. 59(e), requesting that the Court award a new trial as to damages only. (Notwithstanding the pending motion under Rule 59, which divested the December 20 Order of finality or appealability, defendants filed a notice of appeal from that Order.)

By Order dated June 24, 1997, the district court granted Officer Hetzel's Rule 59 motion for a new trial as to damages only. Defendants filed another "amended" notice of appeal from the June 24 Order granting a new trial, as well as a petition for a writ of mandamus or prohibition. In the district court, a new trial as to damages was set for September 16, 1997.

Defendants moved the Court of Appeals for expedited consideration of their appeals, and alternatively for a writ of mandamus or prohibition, barring the new damages trial. On Officer Hetzel's motion the Court of Appeals dismissed the two appeals as interlocutory (a decision not pertinent to this petition), but granted the defendants' petition for a writ of mandamus on September 12, 1997.

In so doing, the Court of Appeals stayed the damages trial, and ordered the district court to "recalculate plaintiff Hetzel's

award of damages for emotional distress and to enter final judgment thereon." The Court of Appeals instructed the district court, "pursuant to our earlier mandate, to 'closely examine the awards' " in two other cases " 'which we believe are comparable to what would be an appropriate award in this case.' "

Because the Court of Appeals' use of the writ of mandamus to impose a specific remittitur, without permitting Officer Hetzel the option of a new trial as to damages, violates the Seventh Amendment, Officer Hetzel petitions this Court to review the action of the Court of Appeals for the Fourth Circuit.

REASONS FOR GRANTING THE WRIT

In the Fourth Circuit, the right to a jury trial in civil rights cases is seriously in jeopardy.[1] In this case the Court of Appeals, in violation of the Seventh Amendment, has imposed by writ of mandamus its own view of the magnitude of injury suffered by the Petitioner, and has denied her the Constitutional right to choose a new trial as to damages.

---

1. *See also* the petitions for certiorari in *Grier v. Titan Corp.* and *Gill v. System Planning Corp.*, filed concurrently with the instant petition, in which the Fourth Circuit also rejected the properly-instructed juries' assessment of damages and liability in employment related civil rights cases.

I.

AN APPELLATE COURT, BY WRIT OF MANDAMUS OR OTHERWISE, MAY NOT IMPOSE A REMITTITUR ON A SUCCESSFUL CIVIL RIGHTS PLAINTIFF WITHOUT PERMITTING THE PLAINTIFF THE OPPORTUNITY TO ELECT A NEW TRIAL AS TO DAMAGES.

A. The Court Of Appeals' Writ Of Mandamus Imposes A Remittitur On Petitioner Without The Option Of A New Trial As To Damages, In Violation Of The Seventh Amendment To The Constitution.

A remittitur may not be imposed on a successful plaintiff without offering the plaintiff the option of a new trial as to damages. In this case, the district court offered that option to Petitioner; Petitioner selected that option; and the Court of Appeals — using the unusual and inappropriate method of mandamus — denied that right to a trial.

The Seventh Amendment to the United States Constitution guarantees the election offered by the district court to Officer Hetzel:

> [N]o court of law, upon a motion for a new trial for excessive damages and for insufficiency of the evidence to support the verdict, is authorized, according to its own estimate of the amount of damages which the plaintiff ought to have recovered, to enter an absolute judgment for any other sum than that assessed by the jury.

Kennon v. Gilmer, 131 U.S. 22, 29, 33 L. Ed. 110, 9 S. Ct. 696 (1889). In *Kennon*, this Court held that the action of an appellate court:

> without submitting the case to another jury, or putting the plaintiff to the election of remitting part of the verdict before rendering judgment for the rest, was irregular, and, so far as we are informed, unprecedented.

131 U.S. at 270-28, 33 L. Ed. at 113, 9 S. Ct. at 698.

In short, in accord with the Seventh Amendment, a "remittitur gives the plaintiff a choice. 'He can refuse to accept the reduced amount of damages and instead proceed to trial.' " *Korotki v. Goughan*, 597 F. Supp. 1365, 1383 (D. Md. 1984) (quoting Wright & Miller, *Federal Practice and Procedure*). "Remittitur is allowed only when the verdict cannot be justified upon the evidence and only if the court affords the plaintiff the option of a new trial." *Boyd v. Bulala*, 672 F. Supp. 915, 921 (W.D. Va. 1987). *See, e.g., Atlas Food Systems & Services, Inc. v. Crane National Vendors, Inc.*, 99 F.3d 586 (4th Cir. 1996) (noting option of new trial or remittitur); *Atlantic Coast Line R.R. Co. v. Bennett*, 251 F.2d 934, 939 (4th Cir. 1958) (same); *Fuller v. Brown*, 15 F.2d 672, 678 (4th Cir. 1926) (same); *Freeman v. Case Corp.*, 924 F. Supp. 1456 (W.D. Va. 1996) (same); *Seabury Management Co. v. PGA of America, Inc.*, 878 F. Supp. 771, 784 n.24 (D. Md. 1994) (noting "the Court would be required to offer the plaintiff the option of a new trial on damages"); *Defender Industries, Inc. v. Northwestern Mutual Life Ins. Co.*, 809 F. Supp. 400, 413 (D.S.C. 1992), *aff'd without opinion*, 989 F.2d 492 (4th Cir. 1993) (noting option of new trial or remittitur); *Lavay Corp. v. Dominion Federal Savings & Loan Assn.*, 645 F. Supp. 612, 618 (E.D. Va. 1986) (same); *Casdale v. Dooner Labs, Inc.*, 343 F. Supp. 917, 918-20 (D. Md. 1972) (surveying cases). *See also Call Carl, Inc. v. BP Oil Corp.*, 554 F.2d 623, 625-27 (4th Cir. 1977) (discussing availability of direct appeal from remittitur in the absence of a new trial).

B. The Grant Of A New Trial Is A Matter Peculiarly Within The Discretion Of The District Court, And It Is An Abuse Of The Writ Of Mandamus To Reverse The Grant Of A New Trial.

Quite apart from the unconstitutionality of the action of the Court of Appeals, the use of the extraordinary writ of mandamus to bar a new trial is an abuse of the writ. A writ of mandamus is an extraordinary remedy, to be used sparingly. The grant of a new trial, a matter inherently committed to the discretion of the district court, is particularly inappropriate for review by way of extraordinary writ. In *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34, 101 S. Ct. 188, 190, 66 L. Ed. 2d 193 (1980) (per curiam), this Court noted:

> A trial court's ordering of a new trial rarely, if ever, will justify the issuance of a writ of mandamus. On the contrary, such an order is not an uncommon feature of any trial which goes to verdict. A litigant is free to seek review of the propriety of such an order on direct appeal after a final judgment has been entered. Consequently, it cannot be said that the litigant "has no other adequate means to seek the relief he desires." The authority to grant a new trial, moreover, is confided almost entirely to the exercise of discretion on the part of the trial court. Where a matter is committed to discretion, it cannot be said that a litigant's right to a particular result is "clear and indisputable" [as it must be for mandamus to issue].
>
> To overturn an order granting a new trial by way of mandamus indisputably undermines the policy against piecemeal appellate review.

449 U.S. at 35, 101 S. Ct. at 190-91 (citations omitted). While

review of a trial court's decision not to overturn a jury verdict is not inconsistent with the Re-Examination Clause of the Seventh Amendment, *Gasperini v. Center for Humanities, Inc.*, 116 S. Ct. 2211, 135 L. Ed. 2d 659 (1996), such review must be carefully cabined and deferential in nature. "Trial judges have the 'unique opportunity to consider the evidence in the living courtroom context' . . . while appellate judges see only the 'cold paper record.' " *Gasperini, supra*, 116 S. Ct. at 2225 (citations omitted).

What has occurred here is nothing less than the use of an extraordinary writ to circumvent the rule against interlocutory appeal. *See, e.g., Thorn v. Parkland Chevrolet Co.*, 416 F.2d 95 (4th Cir. 1969) (per curiam) ("final judgment rule cannot be avoided by this expedient" of extraordinary writ) (denying writ where new trial granted); *Clayton v. Warlick*, 232 F.2d 699 (4th Cir. 1956) ("What applicants are seeking is to review by application for mandamus an interlocutory order from which Congress has not seen fit to grant a right of appeal. This may not be done."); *Southern Railway Co. v. Madden*, 224 F.2d 320 (4th Cir. 1955) (per curiam) ("we do not think that the statute which allows appeal only from final orders, except in a limited class of cases, can be evaded by the simple device of asking this court to issue one of its extraordinary writs") (denying writ where new trial ordered as to damages alone).

Taking from Officer Hetzel her right to elect a new trial as to damages was unconstitutional, and doing so by writ of mandamus was an abuse of the writ.

CONCLUSION

Petitioner Janice E. Hetzel prays that this Court grant this Petition and issue a writ of certiorari to review the Order of the United States Court of Appeals for the Fourth Circuit granting a writ of mandamus in this matter.

Dated: December 8, 1997

Respectfully submitted,

JOHN M. BREDEHOFT
Counsel of Record
ELAINE C. BREDEHOFT
LINDA M. JACKSON
CHARLSON & BREDEHOFT, P.C.
Attorneys for Petitioner
11260 Roger Bacon Drive
Suite 201
Reston, Virginia 20190
(703) 318-6800

APPENDIX A — ORDER AND MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION FILED JUNE 24, 1997

IN THE UNITED STATES DISTRICT COURT FOR
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 94-919-A

JANICE E. HETZEL,

Plaintiff,

v.

COUNTY OF PRINCE WILLIAM, *et al.*,

Defendants.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, plaintiff's Motion for a New Trial is GRANTED, and it is hereby

ORDERED that the judgment of $500,000 entered on April 5, 1996, be and is vacated as to damages but not liability, and it is further

ORDERED that this civil action be returned to the active docket by the Clerk for a retrial of the damages only. Because the grant of a new trial is an interlocutory order, the defendants' notice of appeal is MOOT, and it is further

Appendix A

ORDERED that the parties contact the Court on Tuesday, July 1, 1997 at 10:30 a.m. by telephone to arrange for a trial date.

The scope of the new trial will be limited solely to damages for emotional distress and the evidence is limited to that which existed as of the date the original jury trial was held. In the telephone conference the parties may raise discovery or procedural concerns.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 24th day of June, 1997.

s/ Leonie M. Brinkema
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 94-919-A

JANICE E. HETZEL,

Plaintiff,

v.

COUNTY OF PRINCE WILLIAM, *et al.*,

Defendants.

MEMORANDUM OPINION

This matter comes before the Court on plaintiff's Motion for a New Trial. Because this Motion raises essentially the same issues as plaintiff's Motion to Set Trial Date and for Ancillary Relief, the Court finds that further oral argument is not necessary and will resolve the Motion on the briefs.

I.

This action was filed in 1994, and came on for trial by jury on January 23, 1995. On February 2, 1995, the jury returned its verdict in favor of the plaintiff, an Hispanic Prince William County police officer, on her claims of (i) unlawful retaliation in violation of the Free Speech Clause of the First Amendment, made applicable to the defendants by the Fourteenth Amendment, pursuant to 42 U.S.C. § 1983; (ii) unlawful

retaliation in violation of the Equal Protection Clause of the Fourteenth Amendment, pursuant to 42 U.S.C. § 1983; and (iii) unlawful retaliation in violation of Title VII, 42 U.S.C. § 2000e, *et seq*. The jury awarded compensatory damages of $750,000 for emotional distress, which were apportioned $250,000 to each count. The defendants against whom the judgment was awarded are the County of Prince William and its police chief, Charlie T. Dean.

On April 5, 1995, the Court denied defendants' Motion for a New Trial and granted in part defendants' Motion for Judgment as a Matter of Law to the extent that the Court determined that plaintiff's Equal Protection claim was not valid as a matter of law. Accordingly, the Court reduced the plaintiff's recovery to $500,000. The Court also denied plaintiff's request for injunctive relief requiring defendants to promote her to the rank of sergeant and awarding appropriate front and back pay. Attorneys' fees and costs totaling $176,293 were awarded.

Defendants appealed the judgment and award of attorneys' fees and plaintiff cross-appealed the denial of injunctive relief. On July 11, 1996, the Court of Appeals for the Fourth Circuit affirmed the jury's findings on liability and this Court's ruling on injunctive relief, but held that the compensatory damages award of $500,000 was "grossly excessive when compared to the limited evidence of harm presented at trial and would result in a serious miscarriage of justice if upheld." *Hetzel v. County of Prince William*, 89 F.3d 169, 173 (4th Cir. 1996). The Court remanded the case to this court for recalculation of the award of damages, as well as the award of attorneys' fees in light of the recalculated damages. In all other respects the rulings in the trial were upheld.

On December 16, 1996, before this Court had recalculated the damages and attorneys' fees, plaintiff filed a Motion to Set Trial Date and for Ancillary Relief in which she argued that the appellate court by reducing her judgment had offered her a remittitur which she rejected and therefore had a right to a new trial. The Court entered an Order on December 20, 1996, which denied plaintiff's Motion as premature and then recalculated the award of compensatory damages to $50,000.[1] The Court also strongly encouraged the parties to try to settle the case.[2] Settlement was unsuccessful.

On January 7, 1997, plaintiff filed the present Motion for a New Trial in which she declined the recalculated compensatory damages and requested a new trial on the issue of damages. Defendants oppose the Motion.

II.

Plaintiff bases her claim for a new trial on the Seventh Amendment's guaranty of a right to trial by jury. The Seventh Amendment provides that ". . . the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise

1. In its opinion, the Fourth Circuit directed this court to "closely examine the awards in *Bradley v. Carydale Enter.*, 730 F. Supp. 709, 726-27 (E.D. Va. 1989) and *McClam v. City of Norfolk Police Dep't.*, 877 F. Supp. 277, 284 (E.D. Va. 1995), which we believe are comparable to what would be an appropriate award in this case." 89 F.3d at 173. Although these two bench trials awarded compensatory damages of $9,000 and $15,000, respectively, this Court concluded based on its observation of all the evidence presented during the eight day trial that a somewhat higher award was justified.

2. The Court postponed recalculating attorneys' fees to await the results of the parties' efforts to settle the judgment.

re-examined in any Court of the United States, than according to the rules of the common law."

The parties do not dispute that the Fourth Circuit's opinion, as implemented by this Court when it reduced the jury's verdict to $50,000, became a remittitur, which is defined in Black's Law Dictionary as "[t]he procedural process by which an excessive verdict of the jury is reduced." Nor do the parties dispute that the plaintiff has rejected the reduced damage award and asked for a new trial. What remains at issue is whether, in light of the Fourth Circuit's remand and instructions, this Court has the authority to order a new trial. A careful review of the parties' briefs, authorities and the Fourth Circuit's opinion leads this Court to conclude that plaintiff must be afforded a new trial on the issue of damages.

III.

Defendants argue that under the mandate of the Fourth Circuit a new trial is not available to plaintiff. "This Court's authority over this case now is constrained by the Fourth Circuit decision both as to the law of the case and the parameters of its current review. The Fourth Circuit mandate must be implemented, and this Court cannot engage in further proceedings which would conflict with that mandate." (Defendants' Opposition to Plaintiff's Motion to Set Trial Date at 5). The mandate at issue simply and clearly reverses the judgment and remands the case "for recalculation of damages for emotional distress and recalculation of attorneys fees." This Court has done what the mandate directed; it has recalculated the damages. However, plaintiff's rejection of that recalculation creates a significant new issue, that is, whether plaintiff may retry her damages claim. This Seventh Amendment issue was

not before the Fourth Circuit and therefore could not have been contemplated in its decision or addressed in the mandate.

As the plaintiff demonstrates, the case law in the Fourth Circuit clearly holds that when a court finds a jury's verdict excessive and reduces it, the prevailing party has a right either to accept the reduced award or have a new trial, either on the entire case or just as to damages. *Atlas Food Systems and Serv. v. Crane Nat. Vendors*, 99 F.3d 587, 593 (4th Cir. 1996) ("if a court finds that a jury award is excessive, it is the court's duty to require a remittitur or order a new trial"); *Korothi v. Goughan*, 597 F.Supp. 1365, 1383 (D.Md. 1984) ("remittitur gives the plaintiff a choice. 'He can refuse to accept the reduced amount of damages and instead proceed to trial.' "); *Boyd v. Bulala*, 672 F.Supp. 915, 921 (W.D. Va. 1987), *rev'd. on other grounds*, 877 F.2d 1191 (4th Cir. 1989) ("Remittitur is allowed only when the verdict cannot be justified upon the evidence, and only if the court affords the plaintiff the option of a new trial").

In looking at the appealability of an order of remittitur, the Fourth Circuit has recognized that where a plaintiff rejects a remittitur, the district court should order a new trial. *Call Carl, Inc. v. BP Oil Corp.*, 554 F.2d 623 (4th Cir. 1977), *cert. denied*, 434 U.S. 923 (1977). The appellate court has observed that "if the proper course for the district court in this case was to treat plaintiffs as having rejected the remittitur, then a new trial should have been ordered, and none of the issues in this case would properly be before us for review, for such orders are interlocutory in nature and leave no final judgment from which to appeal." *Id.* at 626.

Whether the jury verdict is reduced by the trial or appellate level court makes no difference to the Seventh Amendment right

of trial by jury. As the Federal Circuit expressed in *Oiness v. Walgreen Co.*, 88 F.3d 1025, 1030 (Fed. Cir. 1996), *cert. denied* 117 S.Ct. 951 (1997) (citing *Unisplay v. American Electronic Sign Co.*, 69 F.3d 512, 519 (Fed. Cir. 1995)),

> [a] court is not at liberty to supplant its own judgment on the damages amount for the jury's findings. Therefore, in holding that a jury damage award is excessive, an appellate court has two options. It may simply reverse the jury award and order a new trial or allow the plaintiff the option of agreeing to a remittitur in a specified amount.

Thus, this Court concludes that plaintiff has a right to a new trial, which will be limited to the issue of compensatory damages for emotional distress existing at the time the first trial was held. The issue of attorneys' fees and costs cannot be adequately addressed now, given that any award of fees must be evaluated in light of the plaintiff's success at trial. Therefore, the Court defers ruling on any of the fee petitions until the conclusion of the new trial. *Farrar v. Hobby*, 506 U.S. 103 (1992).

The Clerk is directed to forward copies of this Memorandum Opinion to counsel of record.

Entered this 24th day of June, 1997.

s/ Leonie M. Brinkema
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION FILED DECEMBER 20, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 94-919-A

JANICE E. HETZEL,

Plaintiff,

v.

COUNTY OF PRINCE WILLIAM, *et al.*,

Defendants.

ORDER

For the reasons stated in open court, plaintiff's Motion to Set Trial Date and for Ancillary Relief is DENIED. The Court has recalculated the award of compensatory damages as directed by the Fourth Circuit and awards the plaintiff fifty thousand dollars ($50,000.00), and it is hereby

ORDERED that plaintiff notify the Court by close of business on Friday, January 10, 1997 whether she will accept this award or move for a new trial.

The issue of attorney's fees will be briefed by the parties

before the Court recalculates the award of attorneys fees, and it is further

ORDERED that plaintiff submit her brief by the close of business on Friday January 10, 1997, and defendants submit their brief by the close of business on Friday, January 24, 1997.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 20th day of December, 1996.

s/ Leonie M. Brinkema
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

APPENDIX C — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT IN NOS. 95-1934, -2004, -2010 REVERSING AND REMANDING TO THE DISTRICT COURT DECIDED JULY 11, 1996

PUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 95-1935

JANICE E. HETZEL,

Plaintiff-Appellee,

v.

COUNTY OF PRINCE WILLIAM; CHARLIE T. DEANE,

Defendants-Appellants,

and

G. W. JONES; C. E. O'SHIELDS,

Defendants.

No. 95-2004

JANICE E. HETZEL,

Plaintiff-Appellant,

v.

Appendix C

COUNTY OF PRINCE WILLIAM; CHARLIE T. DEANE,

Defendants-Appellees,

and

G. W. JONES; C. E. O'SHIELDS,

Defendants.

No. 95-2010

JANICE E. HETZEL,

Plaintiff-Appellant,

v.

COUNTY OF PRINCE WILLIAM; CHARLIE T. DEANE,

Defendants-Appellees,

and

G. W. JONES; C. E. O'SHIELDS,

Defendants.

Appeals from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Leonie M. Brinkema, District Judge.
(CA-94-919-A)

Appendix C

Argued: June 5, 1996

Decided: July 11, 1996

Before ERVIN, HAMILTON, and LUTTIG, Circuit Judges.

Reversed and remanded by published opinion. Judge Luttig wrote the opinion, in which Judge Ervin and Judge Hamilton joined.

COUNSEL

ARGUED: Sharon Elizabeth Pandak, County Attorney, Prince William, Virginia, for Appellants. John Michael Bredehoft, CHARLSON & BREDEHOFT, P.C., Reston, Virginia, for Appellee. **ON BRIEF:** Angela M. Lemmon, Assistant County Attorney, Megan E. Kelly, Assistant County Attorney, Prince William, Virginia; Bernard J. DiMuro, DIMURO, GINSBERG & LIEBERMAN, P.C., Alexandria, Virginia, for Appellants. Elaine C. Bredehoft, CHARLSON & BREDEHOFT, P.C., Reston, Virginia, for Appellee.

OPINION

LUTTIG, Circuit Judge:

Appellee, Janice E. Hetzel, an hispanic female who currently is a police officer in good standing in Prince William County, Virginia, brought the instant action against appellants, Prince William County and Police Chief Charlie T. Deane, as well as against other police officers not parties to this appeal, under Title VII and section 1983 alleging harassment and discrimination on the basis of sex and national origin. Hetzel

also claimed that because of her attempts to enforce her right to be free of discrimination, the defendants took various retaliatory actions, including failing to promote her to the rank of sergeant, in violation of the First Amendment, the Equal Protection Clause and Title VII. She requested some $9.3 million in damages plus backpay, retroactive promotion to sergeant, and other injunctive relief.

After an 8-day trial, the jury rejected all of Hetzel's counts (seven in all) alleging sex and national origin discrimination and that she was denied a promotion because of such discrimination, finding that the defendants had not engaged in any invidious discrimination in violation of Title VII. The jury concluded, however, that Chief Deane retaliated against Hetzel "because of [her] engaging in protected speech," and awarded $750,000 in damages for Hetzel's emotional distress. Following the verdict, the district court granted appellants' motion as a matter of law on one of Hetzel's three retaliation claims, and thus reduced the damage award to $500,000. The court also awarded appellee in excess of $180,000 in attorney's fees and costs, but, because the court was concerned that "there is a likelihood that [Hetzel] would interpret any act of discipline as retaliation," it refused to grant Hetzel any injunctive relief against future retaliation. J.A. at 291. For similar reasons, the district court denied Hetzel's request for retroactive promotion to sergeant, noting that "[a]lthough the jury may have found that the failure to promote was retaliatory, the verdict is too ambiguous to support the equitable relief requested by plaintiff. Having observed the plaintiff's demeanor at trial, the Court is concerned that plaintiff does not now possess the temperament necessary to be an effective sergeant." *Id.* at 290; *see also id.* at 291 & n.5.

Both parties appealed raising numerous issues. We leave intact the jury's finding of liability on appellee's retaliation claims. Because we conclude that both the damage award and the award of attorney's fees are excessive as a matter of law, however, we reverse the judgment of the district court and remand the case for further proceedings.

I.

Appellants first contend that the award of $500,000 for emotional distress, based almost entirely on Hetzel's own self-serving testimony concerning stress and headaches, is unsupported by the evidence and excessive as a matter of law. Hetzel, acknowledging that the evidence of damages comes largely from her own testimony, responds that the award is supported by the uncontroverted evidence, is similar to other awards for mental distress in comparable cases, and is easily justified by the numerous adverse actions taken by appellants. Although Hetzel claims that denial of transfers, disparate disciplinary treatment, poor performance evaluations, abusive treatment, a 1995 Internal Affairs ("I.A.") investigation, and the failure to promote are all adverse employment actions supporting the damage award, only the alleged failure to promote and the 1995 I.A. investigation can even possibly constitute adverse retaliatory action, as the other acts either were taken outside the statute of limitations or did not deprive Hetzel of a valuable government benefit, *see, e.g.*, *Huang* v. *Board of Governors*, 902 F.2d 1134, 1140 (4th Cir. 1990).

A jury's award of compensatory damages will be set aside on the grounds of excessiveness only if " ' "the verdict is against the clear weight of the evidence, or is based upon evidence which is false, or will result in a miscarriage of justice," ' " *Johnson* v.

Hugo's Skateway, 974 F.2d 1408, 1414 (4th Cir. 1992) (*en banc*) (quoting *Johnson* v. *Parrish*, 827 F.2d 988, 991 (4th Cir. 1987) (quoting *Aetna Cas. & Sur. Co.* v. *Yeatts*, 122 F.2d 350, 352 (4th Cir. 1941))), or "no substantial evidence is presented to support it," *Barber* v. *Whirlpool Corp.*, 34 F.3d 1268, 1279 (4th Cir. 1994). The district court, with little analysis, rejected appellants' claim that the $500,000 damage award for emotional distress was excessive, concluding that the award was fully supported by the evidence because "most importantly" Hetzel "was crying and shaking throughout most of the trial." J.A. at 284. Quite obviously, a litigant's demeanor while at counsel's table is not evidence to support a damage award.

The evidence presented at trial concerning Hetzel's emotional distress consisted almost exclusively of Hetzel's own brief, conclusory statements — comprising less than ten pages of a joint appendix exceeding 5,000 pages — that she had headaches, stress, trouble reading to her daughter, and problems with her family life as a result of appellants' actions. Hetzel presented no evidence corroborating the existence of any of her supposed specific harms. She remains an officer in good standing with the police department. She continues to perform her duties with no noticeable diminution in performance, as her most recent performance evaluation, which was nothing short of stellar, confirms. She has no observable injuries or physical ailments. Indeed, although Hetzel insists that she was devastated and humiliated by appellants' actions, she has never once seen a doctor, therapist, or other professional, or even sought the counsel of a friend, to help her deal with what is supposedly an enormous problem overshadowing all aspects of her life.

Hetzel's thin evidence of rather limited damages would in-and-of itself entitle her to only a minimal damage award for

intangible injuries. *See, e.g.*, *Rodgers* v. *Fisher Body Div.*, 739 F.2d 1102, 1108 (6th Cir. 1984) (holding that plaintiff's own brief testimony that he was forced to go on welfare and had his car repossessed causing humiliation and distress was insufficient to support a sizeable award for emotional distress), *cert. denied*, 470 U.S. 1054 (1985); *cf. Carey* v. *Piphus*, 435 U.S. 247, 264 (1978) ("[A]lthough mental and emotional distress . . . is compensable under § 1983, we hold that neither the likelihood of such injury nor the difficulty of proving it is so great as to justify awarding compensatory damages without proof that such injury actually was caused."). However, only a part of Hetzel's harms are properly attributed to appellants' retaliatory actions. *Much, if not all, of Hetzel's claimed distress was actually caused by her erroneous belief that she was the victim of invidious discrimination*, and of course, given the jury's findings for the defendants on all of Hetzel's claims of discrimination, Hetzel is entitled to no damages for any injuries which were caused by her belief that she was the victim of invidious discrimination. Sergeant Collier, the one witness Hetzel points to as corroborating her contention that the appellants' retaliatory actions caused her intangible injuries, testified that Hetzel had told him that she was under continuous emotional stress and feeling a "sense of frustration" because of her "dealing with this issue of *discrimination*." J.A. at 1352 (testimony of Sgt. Collier) (emphasis added). Moreover, as the district court recognized, but failed to take into account in its brief examination of the magnitude of the damages, some of Hetzel's stress and emotional difficulties must be attributed to her tendency to overreact to situations. *See id.* at 291 n.5.[1]

---

1. As the district court noted:

> [A discussion] conducted by Sergeant Metheny on February 24, 1995 provides a clear example of the risk of plaintiff's (Cont'd)

The only other evidence of emotional distress that even arguably supports an award of damages is Hetzel's reaction following a fifteen-to-twenty minute Internal Affairs interview, conducted on January 15, 1995, concerning whether Hetzel had improperly advised a suspect of his *Miranda* rights — an investigation which led to an oral reprimand for Hetzel's improper actions. While we have significant doubts as to whether this interview constitutes an adverse employment action which is actionable under Title VII or section 1983, we do not here need to conclusively decide that issue because any temporary reaction Hetzel may have had to this interview does not entitle her to any substantial or significant damage award. Although other officers testified that Hetzel was briefly distraught following the interview, Hetzel, after composing herself, finished out the remainder of her shift. Plainly a $500,000 award for a reaction following a brief interview during the course of a successful investigation is a gross miscarriage of justice.

Simply put, the jury was presented with insufficient evidence "to place a high dollar value on plaintiff's emotional

---

(Cont'd)

> overreaction. The [discussion] was designed to explore plaintiff's understanding of the Miranda warning and to eliminate any confusion plaintiff may have had about the requirements for a proper waiver. . . . Despite Sergeant Metheny's assurance that she would not be disciplined for [a] 1993 case, and before he could question her about it, plaintiff responded that "[i]f you're going to get into this, I refuse to answer any questions right now and I'm going to walk out of here because this is complete harassment." Even First Sergeant Collier, plaintiff's supervisor and strongest supporting witness, felt that plaintiff overreacted to the [discussion].

Id. (internal citations omitted).

harm." *Rodgers*, 739 F.2d at 1108. That this award is outrageous is confirmed by even a cursory analysis of the impressive array of cases cited by the appellee in support of the jury verdict. These cases, all of which contained a substantial award of $25,000 or more for intangible injuries such as emotional distress, involved plaintiffs that either were the victims of invidious discrimination, suffered serious — often permanent — physical injuries, or were discharged and had difficulty finding alternative employment. *See* Appellee's Br. at 32-34 & n.29. For example, in *Meyers* v. *City of Cincinnati*, 14 F.3d 1115, 1119 (6th Cir. 1994), the Sixth Circuit rejected the contention that an award of $25,000 for mental anguish, humiliation and loss of reputation to an assistant fire chief unconstitutionally forced to retire was excessive and not supported by the evidence because the fire chief, *who had been discharged*, had lost ten pounds, suffered from insomnia, and was under a doctor's care for stomach problems. In another case bearing some similarity to the instant case, *Wulf* v. *City of Wichita*, 883 F.2d 842, 874-75 (10th Cir. 1989), the court held that a $250,000 award for emotional distress to a police officer *following unlawful termination*, which was supported only by the testimony of the plaintiff that he was stressed, angry, depressed and frustrated, and similar testimony from his wife, was grossly excessive and remanded the case for recalculation of damages not to exceed $50,000. In stark contrast to these cases, and the others relied upon by the appellee — most of which did not involve an award of damages for emotional distress even approaching the magnitude of the award in this case — Hetzel suffered no discrimination, was not physically injured, is not under the care of a physician, and remains an officer in good standing on the Prince William County police force. *See also Spence* v. *Board of Educ.*, 806 F.2d 1198, 1200-01 (3d Cir. 1986) (affirming district court's remittitur of jury award of $22,060 for emotional

distress where plaintiff testified that she was "depressed and humiliated" by a retaliatory transfer).

As this court has often remarked, "an award of substantial compensatory damages . . . must be proportional to the actual injury incurred. . . . The award must focus on the real injury sustained. . . ." *Piver* v. *Pender County Bd. of Educ.*, 835 F.2d 1076, 1082 (4th Cir. 1987), *cert. denied*, 487 U.S. 1206 (1988). Here, the award of $500,000 was grossly excessive when compared to the limited evidence of harm presented at trial and would result in a serious "miscarriage of justice" if upheld. Accordingly, we set aside the damage award and remand the case to the district court for recalculation of the award of damages for emotional distress.[2] Upon remand, the district should closely examine the awards in *Bradley* v. *Carydale Enter.*, 730 F. Supp. 709, 726-27 (E.D. Va. 1989), and *McClam* v. *City of Norfolk Police Dep't*, 877 F. Supp. 277, 284 (E.D. Va. 1995), which we believe are comparable to what would be an appropriate award in this case.

II.

Appellants also contend that the district court erred in granting appellee's entire $176,293 request for attorney's fees. The district court, after concluding that the unsuccessful discrimination and harassment claims against all defendants — two of which are not even a party to this appeal because they fully prevailed — "shared a common core of operative facts" with the successful retaliation claims against the city and Chief

2. Because we conclude that the $500,000 award is outrageous, we do not need to address Hetzel's contention that the district court improperly reduced the award by $250,000 in granting a judgment as a matter of law for the defendants on one of her retaliation claims.

Deane, and that Hetzel had achieved significant relief in the form of a "substantial damage[ ]" award, granted appellee's full petition for attorney's fees. J.A. at 288-89. We will reverse a district court's determination of attorney's fees only "if under all the facts and circumstances [the award] is clearly wrong." *Hugo's Skateway*, 974 F.2d at 1418 (internal quotation marks omitted).

Especially in light of our determination that the evidence does not support a substantial damage award, we believe the award of $176,293 in attorney's fees was "clearly wrong." Given the limited results she obtained in this case, Hetzel is not entitled to an award of significant, much less full, attorney's fees. As the Supreme Court has instructed, " '[w]here recovery of private damages is the purpose of . . . civil rights litigation, a district court, in fixing fees, is obligated to give primary consideration to the amount of damages awarded as compared to the amount sought.' " *Farrar* v. *Hobby*, 506 U.S. 103, 114 (1992) (quoting *Riverside* v. *Rivera*, 477 U.S. 561, 585 (1986) (Powell, J., concurring in the judgment)). Whereas Hetzel's complaint requested $9.3 million in damages, back pay, retroactive promotion to sergeant, and other injunctive relief, she will ultimately receive only a pittance of her original damages request and no injunction [sic] relief, promotion nor back pay. Moreover, the Supreme Court has also explained that,

> [w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. . . . We emphasize that the inquiry does not end with a finding that the plaintiff obtained significant relief. *A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.*

Hensley v. *Eckerhart*, 461 U.S. 424, 435, 439-40 (1983) (emphasis added); *see also Farrar*, 506 U.S. at 114 ("Indeed, 'the most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.' " (quoting *Hensley*, 461 U.S. at 436)). Here, Hetzel failed on her core claims — the seven counts alleging invidious sex and national origin discrimination. Because Hetzel has gained but an insignificant portion of the relief she originally requested and because she has failed to prevail on her most consequential claims, she is entitled only to a fraction of her attorney's fees.

In sum, we vacate the fee award and remand to the district court for reconsideration of appellee's fee petition.

III.

Finally, we consider appellee's cross-appeal. Hetzel claims that because she prevailed on her retaliation claim she is "presumptively" entitled to equitable relief in the form of front and backpay, or retroactive promotion to sergeant, and that the district court abused its discretion in refusing to award any such relief. We disagree. With respect to backpay, the evidence clearly showed that Hetzel earned more as a police officer than she would have earned as a sergeant because officers, but not sergeants, are paid overtime. With respect to a promotion or front pay, the district court determined:

> Although the jury may have found that the failure to promote was retaliatory, the verdict is too ambiguous to support the equitable relief requested by plaintiff. Having observed the plaintiff's demeanor at trial, the Court is concerned that plaintiff does not now possess the temperament necessary to be an effective sergeant.

J.A. at 290. We can find nothing in the voluminous record in this case that even suggests that the district court abused its discretion, and we will not order that someone be promoted to a higher level within a paramilitary organization where they lack the requisite qualities to perform the duties of the job effectively.[3]

For the reasons stated herein, we reverse the judgment of the district court and remand the case for recalculation of damages for emotional distress and recalculation of attorney's fees.

REVERSED AND REMANDED

---

3. Both parties raise numerous other issues. We have carefully considered each issue and have concluded that the remaining claims either have not been properly preserved for appeal or are without merit.

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT GRANTING MOTION FOR WRIT OF MANDAMUS STAYING DISTRICT COURT PROCEEDINGS FILED SEPTEMBER 12, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-1878
(CA-94-919-A)

In Re: BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA; CHARLIE T. DEANE, Prince William County Police Chief,

Petitioners.

ORDER

The Board of Supervisors of Prince William County moves this Court for an interlocutory appeal of the district court's order of June 24, 1997, granting plaintiff Hetzel's motion for a new trial on the issue of damages. Alternatively, the Board petitions this Court pursuant to 28 U.S.C. § 1651 for a writ of mandamus.

The Court denies the motion for an interlocutory appeal. The petition for mandamus, however, is granted. The scheduled retrial on the issue of damages in the case of *Hetzel v. County of Prince William* is, hereby, stayed pending further order of the Court.

Pursuant to our judgment and opinion in *Hetzel v. County of Prince William*, 89 F.3d 169 (4th Cir. 1996), the district court is ordered to recalculate plaintiff Hetzel's award of damages

for emotional distress and to enter final judgment thereon. In recalculating damages, the district court is, pursuant to our earlier mandate, to "closely examine the awards in *Bradley v. Carydale Enter.*, 730 F. Supp. 709, 726-27 (E.D. Va. 1989), and *McClam v. City of Norfolk Police Dep't*, 877 F. Supp. 277, 284 (E.D. Va. 1995), which we believe are comparable to what would be an appropriate award in this case." *Hetzel v. County of Prince William*, 89 F.3d 169, 173 (4th Cir. 1996).

Judges Hamilton and Luttig concur in the order of mandamus. Judge Ervin dissents from such order. Judges Hamilton, Luttig, and Ervin concur in the order denying the County of Prince William's motion for an interlocutory appeal.

For the Court

/s/ Patricia S. Connor
Clerk

APPENDIX E — CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS INVOLVED

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT XIV

(Ratified July 9, 1868)

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding

Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave;

---

* Changed by section I of the twenty-sixth amendment.

but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

§ 704 [§ 20003-3]. Other unlawful employment practices

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Appendix E

STATUTORY PROVISIONS

42 USC § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory *or the District of Columbia*, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.